

## **BOARD OF ZONING APPEALS**

### **Minutes**

**December 21, 1999**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on December 21, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER arrived at 1:40 p.m., FLOYD PITTS, BRADLEY TIDEMANN, DAVE BABICH, JOHN ROGERS, JUANITA SWANN, and RANDY PHILLIPS arrived at 1:45 p.m.

The following Planning Department staff members were present: Secretary, DALE MILLER, Assistant Secretary, LISA VERTS and Recording Secretary, ROSE SIMMERING.

Also present was J.R. COX, Office of Central Inspection.

**MILLER:** There is another group coming in after this meeting at 2:00 p.m.

**PITTS:** How did that happen? MAPC give and MAPC takes away. It is 1:32 p.m. and we will call the Board of Zoning Appeals to order. I would still like the secretary to call the role please. We do have quorum?

**SIMMERING:** Yes, we do.

**PITTS:** We only have the one item on the agenda. I guess we do have some approval of minutes. Approval of minutes August 24, 1999 meeting. Everyone had an opportunity to review those. I have reviewed the minutes.

**BABICH:** My name is absent from being present at the August 24, 1999 minutes.

**PITTS:** On August 24, 1999 you were a member present?

**BABICH:** There are some contributions attributed to me in the body of the minutes.

**PITTS:** Yes, that is right, there are a few.

**SIMMERING:** I will make that correction.

**PITTS:** You will make that correction?

**SIMMERING:** Yes, I will.

**PITTS:** Any other corrections? If not, the chair will make entertain a motion for approval of minutes of August 24, 1999, with the correction Dave Babich was present.

**PITTS moves and BABICH second to approve the minutes for August 24, 1999.**

**MOTION CARRIES 5-0.**

1. **Case No. BZA 27-99, Wichita Country Club/Equity Club, pursuant to Section 2.12.590B, Code of the City of Wichita, request a variance to reduce the front yard setback from 25 feet to 15 feet on property zoned "SF-6" Single Family Residential on property legally described as follows:**

**A complete legal description is available for public inspection at the Metropolitan Area Planning Department, 10<sup>th</sup> Floor, City Hall, 455 North Main Street, Wichita, Kansas. Generally located at east of Rock Road on the south side of 13<sup>th</sup> Street.**

**VERTS:** Reviews staff report and shows slides.

**BACKGROUND:** The applicant is requesting a variance for a decrease in the required front yard setback from 25 feet to 15 feet. The Wichita Country Club has recently installed a new irrigation system for their golf course facility. As part of this system a pump station was installed along the north property line of the Country Club. Although privately owned, the location for the pump station was determined through coordination with the Wichita Water Department, KG&E, and various engineering and irrigation system designers and by the existing utility, physical, and practical conditions at the site. The applicant wants to build a block, roofed enclosure around the pump station, measuring 30 feet by 24 feet.

The enclosure of the pump is necessary for both practical and security reasons. The applicant wishes to protect the pump station from the elements, especially from freezing temperatures. Additionally, the enclosure would protect the pump station from vandalism and hide what might be considered a visual nuisance for vehicular traffic along 13<sup>th</sup> Street. At some point in the future, the Country Club will screen the entire north boundary with a concrete "slump block" wall; this structure would be incorporated into the design of that screening wall.

The only uses adjacent to the location of the pump station are the golf course and single-family residential north of 13<sup>th</sup> Street North (Koch Property). No other residential properties have direct visibility of this location. The pump house would be 1,817 feet from the centerline of Rock Road to the west and 825 feet to the closest residential property to the east.

**ADJACENT ZONING AND LAND USE:**

*(For entire 1/4-section of Wichita Country Club)*

NORTH	"LC" and "SF-6" – Single-Family Residence
SOUTH	"SF-6" – Apartment Complex
EAST	"SF-6" – Single-Family Residence

WEST                    “LC“, “GO” and ”SF-6” – Commercial Development and single-family homes along west side of Rock Road

**UNIQUENESS:** It is the opinion of staff that this situation and property is unique inasmuch as the location of the pump station was deemed the most appropriate location by the Wichita Water Department, KG&E, MKEC Engineering, the irrigation system designer, and the Wichita Country Club. This decision was based on the existing utilities and the physical and practical conditions of the site.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested would not adversely affect the rights of adjacent property owners, inasmuch the pump house is far removed from any sight lines of adjacent residential property. The residential property to the north is heavily screened with vegetation and a concrete block wall; the closest residential property to the east is 825 feet. Enclosing the pump station will actually provide screening from the equipment, which surely is more unsightly than the concrete block enclosure.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch relocation of the pump station would require redesign of the irrigation system. The current location offers the potential of incorporating the north wall of the building into the overall street side screening.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as no public utilities or rights-of-way are being infringed upon; the enclosure will help to cover the pump station equipment, which may be deemed more unsightly than the enclosure.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the rights of adjacent property owners are being protected. Additionally the enclosure of the pump station would be a visual improvement for traffic along 13<sup>th</sup> Street.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the front yard setback be GRANTED, subject to the following conditions:

1. The site shall be developed and required to comply with all building, zoning, and landscape code requirements, except that the front yard setback north of the enclosure shall be reduced to 15 feet. This setback reduction shall apply only to the improvements shown on the site plan approved by the Board of Zoning Appeals. The addition shall be constructed in general conformance with said site plan.
2. The applicant shall obtain all local permits necessary to construct the indicated improvements and all improvements shall be completed within one year following the BZA approval of the variance or resolution unless such time period is extended by the BZA.

3. The pump station enclosure shall be construction of the same block material as has been used in the surrounding screening wall system at the Wichita Country Club. At such time when the wall is constructed along this north portion of the property, the enclosure shall be integrated into the construction of screening wall.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board if the applicant has fails to comply with any of the foregoing conditions.

**VERTS:** Staff is in support of this request and I would stand for any questions.

**PITTS:** Lisa, it has been brought to my attention that there is some inconsistency or possible ambiguity as to how many feet of front yard setback are actually being requested. Now your report says 25 feet to 15, the agenda calls from 25 feet to 10 and I was hoping that the site location map could clarify that but I am afraid it has not.

**VERTS:** The actual application and I think there might have some error in the original public notice that went out. But, the application is to reduce the front yard setback from 25 feet to 15 feet so a reduction of 10 feet. I believe the public notice and probably what is stated on the Agenda says reduce it to 10 feet. So it is actually a request for less footage then was on the original public notice.

**PITTS:** So that should be noted since it is being moved less than what was informed the CPO council.

**VERTS:** Yes.

**PITTS:** That should not constitute any action?

**VERTS:** No, if that was the other direction, I could see where we might have some problems but I think we are ok here.

**PITTS:** Any questions for staff from the Board?

**VERTS:** The applicant is not here.

**BABICH:** What is the roofline like on this building?

**VERTS:** That, I am not certain. The building as we saw it was almost to height. The applicant did not submit a elevation for the building and I believe that will be the finished height of the building, obviously the roof is not there and I do not believe that I can answer your question.

**PITTS:** I would like to ask if it is normal, if we issue or you issue conditional construction permits?

**VERTS:** That was up to OCI, we do not issue those permits. I guess there was some

sense of urgency in getting this building put up for the protection of the pump station itself. OCI felt that the issuance of the conditional permit was justified in their mind. The application had been submitted for this request at the time that the conditional was issued. I honestly do not know if they have a distinct policy and when and why they issue the conditional use permit. But, I think there was some sense of urgency on the part of the applicant to do this.

**FOSTER:** Are you sure you mean to call it a conditional use permit that goes through the planning commission, the governing body and the whole thing?

**VERTS:** The conditional permit was a building permit, the conditional building permit to allow the construction of the or the beginnings of the construction.

**FOSTER:** They use that terminology conditional permit?

**COX:** That is correct.

**VERTS:** Yes.

**COX:** Conditional building permit. It is not a full building permit.

**FOSTER:** The only ones that I have ever seen are when they allow doing a foundation. You mean they have done this in the past to allow for a whole building to be built like this?

**VERTS:** I do not know what the conditional permit was written for, and yes, the ones that I have been aware of have been for footings and foundations. I do not know how this one was written; perhaps J.R. could speak to that.

**COX:** I could. Normally you are right, the most routine would probably be a footing foundations, slab, but they do issue conditionals through various stages, they may let them go through wall construction or various other stages, but no full permit and certainly no final of any type can be issued. The persons take it at their own risk.

**PITTS:** Any other questions of staff?

**FOSTER:** When was it built?

**VERTS:** Pardon me.

**FOSTER:** When was it built, do you happen to know when the permit was issued?

**VERTS:** No, I don't. It was at some point after the filing of the application. OCI did contact me and ask if the application had been filed.

**FOSTER:** Thank you.

**PITTS:** I just wonder, when they issue those conditional use permits, you may not be

knowledgeable of this, if they also issue any caveats to the effect that there is additional approval required.

**VERTS:** It is my understanding that that is part of the, that is a condition of the conditional building permit as well.

**MILLER:** Yes, the ones that I have been aware of in the past, the applicant is made aware that he is proceeding at his own risk. That if there is a failure to obtain required permits, then they have a building that they can't use and they may have to take it down. It has not happened but they are advised of that at least of the ones that I am aware of in the past.

**BABICH:** Isn't there the one on the west side, that guy from Texas who wanted to build a amusement park or something?

**MILLER:** You mean Minor Mikes? Yes, that was conditional footage and foundations. He was from Chicago.

**FOSTER:** That was an interpretation of the C.U.P., a totally different thing.

**PITTS:** Anyone in the audience to speak for or against this variance? I guess we can still bring it back to the bench. Is there any further discussion?

**FOSTER:** I apologize for being late, but was an explanation given to, and I have read the report as to why it had to be there? I mean is it clear, was that presented?

**PITTS:** I think that Lisa had mentioned that for some protection of something.

**FOSTER:** Well, that protection could be put anywhere. Why was it put 15 feet off the right-of-way? That's what I am asking?

**PITTS:** The question is well taken, I can't explain that.

**FOSTER:** Mr. Chairman, I think this ought to be deferred until the applicant can appear and answer those kinds of questions. I think it is demeaning to this Board to go that far to do something like that. I think it is uncalled for.

**MILLER:** For whatever I can add and Lisa may be able to help. It is our understanding, that part of the façade of the well house will become part of the fence that surrounds the whole area. That at some point they anticipate fencing or building a wall around that segment of 13<sup>th</sup> Street and this portion will be just part of the wall and is made to match the wall, at least that is what our understanding is. The applicant may know more than we may.

**FOSTER:** But, their argument was that because of the way the piping and the infrastructure was put in that it had something to do with why it had to be put there. I mean, maybe it is both.

**VERTS:** This is Geary Goss, he is the manager of the Country Club and is willing to

answer any question that the Board may have. If you could step up to the podium and state your name and address for the record.

**GEARY GOSS, GENERAL MANAGER OF THE WICHITA COUNTRY CLUB/ EQUITY CLUB:** I apologize for being late, I got lost.

**VERTS:** I have given an explanation of the variance request and there is some question as to the actual location of the pump. Why was it placed in that location in the first place?

**GOSS:** The location of the pump, our irrigation consultant out of Iowa had placed the pump there with the 14 inch waterline that is coming off of the City tap. Where the location is the 14 inch pipe in order to make the angle going to its initial fed which is to the south and west, that was the location where they felt it best be for the pipe. And given the topography of the particular ground, that was the flattest spot possible in line with that pipe, before we ran into the creek, which is just due west of the location of where the pump house is right now. There is also a transformer for the electric company, which is straight north across the street. Directly across from the pump station also that will be feeding the electricity for the pump station.

**PITTS:** So how long has the pump itself been there?

**GOSS:** The pump is new. It arrived probably five or six weeks ago, I believe if my timing is correct. We are installing a brand new irrigation system on the grounds for the golf course and that pump is to replace the two existing pumps that are on-site.

**PHILLIPS:** And you are doing this with city water and not on a pump, not on a well?

**GOSS:** No, we tapped into the 16 inch water main that is on 13<sup>th</sup> Street, city water, yes.

**PHILLIPS:** Well, to clarify the question which Mr. Foster had asked earlier and again I walked in a little bit late. I think Mr. Goss, what the Board is looking for is why was such a large site as a golf course? Why is it being located there so that, and why would this location, will the location requires a variance. We just need a little more detail. I think Mr. Foster, is that what your question really is?

**FOSTER:** I am reading a report here and the Country Club knew where it was, Wichita Water Department knew where it was, KG & E knew where it was, your engineers prepared very detailed plan as to where it was. Central Inspection gave a permit and nobody thought of the Board of Zoning Appeals in terms of a variance until now. How did it get this late into the system, without any one of these groups thinking about this? And you got a permit to build it.

**GOSS:** Mr. Foster, I do not have a good answer for you Sir. When I found out that it was inside the 25-foot setback, obviously my response was exactly what you had said. I had gone through several professionals and relied upon them to set the location, and the pipe spikes and things of that nature. I do not have an answer for you sir.

**FOSTER:** Did it have to be built when it was built? Was there some timing? How long

has this structure been there?

**GOSS:** The structure is new. The pump station is new and the timing was based on our ability to get the contractor in with his crews to be able to do the work to provide us with the irrigation system. The goal for the new irrigation system was not only to have green grass year around but also to reduce the water consumption with modern technology of a computerized irrigation system. So we were working on the contractors schedule, of trying to get us in before they started their spring jobs. We started our project actually three months earlier than what we had anticipated doing so that we could get this particular contractor that does work all over the United States.

**PITTS:** Any other additional question for Mr. Goss?

**BABICH:** My earlier question was with regards to the roof structure, what it will look like? Dale said that it might be a part of an anticipated fence line there. That would make it even more important what the roof looked like. Is it going to have a roof?

**GOSS:** Yes, sir. It is intended to have a roof; it is a truss roof with the timberline type shingles on it. The landscaping is intended to put the trees around it. With the new 13<sup>th</sup> Street construction, the creek is right next to it they are putting a new bridge in. They are actually re-channeling the creek, so it is coming a little bit further east and we will be planting trees to screen it along with some rip-wrap to deter the water. So, we will have trees around it, on all four sides also.

**BABICH:** A gable roof?

**GOSS:** It is a gabled roof.

**PHILLIPS:** Point of clarification for the Board, when you said Timberline shingles, those are asphalt shingles. That is a heavy duty, of what they call an "architectural grade." I guess I am like Mr. Babich, I would like to see what it is going to look like. When you say a gable roof, I draw houses and I got one right now that has a 5-foot overhang on it. If I got a 5-foot overhang on this it is going to project closer to the property line I might feel a little bit differently about it than I am looking at this plan. I do not know about the rest of the Board but I do concur with Mr. Babich, we have some good information, but I do not think that it is complete enough. I am not so sure that I would want to vote on it today, based on that and I think I am hearing some other sentiment from the other Board members to. Mr. Goss, do you think that it is possible that you can get, although it seems like a very simple deal at times, I mean sometimes it isn't as quite as simple as it seems. Do you have any further drawings? Do we know how much of an overhang? Do we know what the pitch is on the roof?

**GOSS:** I thought that there was a drawing that Tom turned in.

**VERTS:** I have not received any elevation drawings.

**GOSS:** There are elevation drawings, I apologize, and I thought our architect had turned those in. I apologize I can get those for you.



**PHILLIPS:** I think it would be helpful, I think it would or may minimize somebody voting one way and then getting something where they may have voted another way. I think in all practical purposes Mr. Goss, it might be more fair to you if we make a decision based on having all the information.

**VERTS:** I just received indication that for the building permit, they would have had to submit plans, including elevations. So, those elevation drawings could very well be downstairs, and Dale is going to run down and see if he could find those.

**PHILLIPS:** And everybody says government does not respond to the needs of the people.

**GOSS:** I have seen the elevation.

**PHILLIPS:** Do you know approximately how big the overhang is? Less than 2 feet or sometimes it is just, I doubt very seriously if it is a very big overhang.

**GOSS:** I thought it was 18 to 24 inches. We were trying to minimize it for landscaping.

**PHILLIPS:** Somebody made the comment, if I may continue, that this was to be actually engaged in the wall? I do not see that indicated anywhere on the drawings.

**GOSS:** At one point and time there was discussion about the (excuse me for using my fingers), but, the wall runs east and west along 13<sup>th</sup> Street and there was a point and time that my Board of Directors had asked me to get a hold of Mr. Snodgrass about continuing the stone wall all past number 1 fairway. But, if you go further east of where the pump house is the pump house if you look back to the south looks down number one fairway. The talk was to have the fence contractor actually extend the fence instead of stopping at what we call the east creek and I am not for sure what it is technically called. There are two bridges on 13<sup>th</sup> Street that they are tearing out. The one on the east is what we called the east creek, of running that concrete fence past the east creek instead of stopping it there, running it past the east creek going east and stopping at about another 200 feet east of the pump house. In doing so it was thought that if we made it part of the wall it would look more intrusive by the fence running down the property line and then jetting back to catch the pump house, and then going back out. We felt that would cause more attention to the pump house and so we have abandon that idea of including it as part of the wall.

**PHILLIPS:** I may have missed it, where will the fence or the concrete wall run in relationship to the pump house then?

**GOSS:** Do you have a plat there?

**PHILLIPS:** I have what was supplied to us. I did come in a little bit late.

#### **THEY ARE LOOKING AT THE MAP**

**GOSS:** The masonry wall will actually run on the property line, here is what I am referring to as the east creek. What is happening is that they are putting in the new bridge with box culverts?

**PHILLIPS:** Mr. Goss, to be real honest, you can't see me, but I can not see that from here. If you will refer to the bigger drawing where you have, because everything is located there. The one on the lower part of the screen. There is the building right there in front of you.

**GOSS:** Here is the building. Then you've got a 15 foot 10 inches to the property line. The concrete fence runs along the property line.

**PHILLIPS:** Right at the property line?

**GOSS:** Yes, sir. There is a 24-inch pad that is being left for us to put the fence on after 13<sup>th</sup> Street is completed.

**PHILLIPS:** That explains it.

**VERTS:** I am not sure if you have been able to read the staff report. But, when I spoke with Mr. Compton, he had indicated to me that that was still part of the plan to incorporate that building into the screening wall for the golf course. That is one of the conditions of this recommendation that the enclosure be integrated into the construction of the screening wall.

**GOSS:** It can happen, I just felt that it would cause more attention if the concrete, masonry wall is running down the property line and then it comes back to attach to the pump station and then it goes back out again there would be this instuff right here. The feeling was if we took the concrete wall down the property line heading east and did landscaped the structure on the four sides, we would like to minimize its appearance also, just as sure as you all would to make it less intrusive as possible on 13<sup>th</sup> Street. The planning was to do it with landscaping.

**PHILLIPS:** How tall is the wall?

**GOSS:** It is an eight-foot wall.

**PHILLIPS:** The height of the wall, say to the edge of the roof then is how high?

**GOSS:** I am going to say eight feet approximately.

**TIDEMANN:** So is the wall then going to cover the building? The walls on the north side of the building? So the wall essentially shield the building?

**BABICH:** Except the roof.

**GOSS:** And I do not know what the angle of view if you are driving by, if you are walking by, I don't think you will ever see it because you couldn't see over the wall, but as you are driving you will be down low too so I am not for sure what that angle would be but you would actually see part of the roof.

**FOSTER:** Mr. Chairman doesn't raise the question whether this is unique. In other words, if the original intent was to incorporate it into the wall system, there would be some uniqueness to it. Now, why is it unique to this location? I haven't heard anything about why the pipes and pumps and everything had to have a variance for this. Am I missing something?

**BABICH:** Doesn't it have to do with the distribution system. Wanting it farther north for maximum efficiency of the distribution system, I think.

**FOSTER:** Let's get to the wall for a minute, why did it have to be here? Could it have been 10 feet in and avoid a variance and so forth?

**GOSS:** It could have probably been 10 feet further to the south Mr. Foster, and avoided the variance completely. Again, when I found out about the 25-foot setback, I asked all of our people the same question. They just said they picked this location based upon the run of the water, the back flow preventer, it is a 14-inch pipe for the back flow preventer that we have also for the irrigation system.

**FOSTER:** It is not part of the drawing, or anything like that. It is just a little bit of a stretch to try to make a finding that it is unique.

**PITTS:** I think Dale is trying to come up with the elevation plans. Is that right? Do you care to wait to look at those.

**VERTS:** He should be on his way back up. If you feel that you want to make a decision without seeing them, that is up to you.

**BABICH:** I think the roof elevation is real important. If it were gabled, I would want to know which direction it is gabled. I prefer it to be hidden, frankly. Do you know which roof? The exposure to 13<sup>th</sup> Street, I think is critical to its appearance overall in that area. I would think that you would want to contribute to the appearance of that area, but I guess it is up to us to determine if that has been done.

#### **DALE IS BACK WITH ELEVATION PLAN. LOTS OF DISCUSSION.**

**PHILIPPS:** Twelve-inch overhang all the way around it.

**PITTS:** Mr. Babich, does that answer your questions?

**BABICH:** Yes, I am satisfied with the roofline, Thank you.

**PHILLIPS:** For what it is worth, it looks like the overall height of the building to the very top of the ridge is about 14 feet.

**PITTS:** Any additional questions for Mr. Goss? Not seeing anybody in the audience to speak against it we will bring the discussion back to the bench. There is no real sense of urgency but I think this room has been promised to someone else at 2:00 p.m. But, we do want to give full deliberations of all cases. If we need to recess we will but not adjourn until we can complete the business at hand. The Chair is in a position to entertain a

motion.

**PHILLIPS moves and BABICH seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report, with the exception, I would like to see the building not be integrated into the construction of the wall, if that is appropriate for the Board.**

**PITTS:** Any further discussion?

**FOSTER:** Mr. Chairman, I certainly agree with Mr. Phillips, I think it is better not to incorporate into the wall. I think it is more noticeable. It would be better setback and not right in the public eyes so to speak on the front. I think that is an improvement.

**PITTS:** As I recall Mr. Goss's statements, that is certainly something they can certainly abide by and live with is that right?

**GOSS:** Yes, sir.

**FOSTER:** I would change item three on the conditions and the resolution needs to be change.

**PHILLIPS:** Basically what we could do is strike the entire second sentence of item 3 is that appropriate?

**FOSTER:** Yes, it sounds like to me. Strike all of three.

**PHILLIPS:** No, I would not strike all of three.

**PITTS:** Just the last sentence of condition three.

**PHILLIPS:** The first sentence basically I think is important because it reference the materials. I would keep that part.

**MOTION CARRIES 7-0.**

**PHILLIPS moves and BABICH seconds, that the Board accept the findings of fact as set forth in the secretary's report; and that all five conditions set out in the Section 2.12.590(b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report, with the exception, that the enclosure not be integrated into the wall.**

**PITTS:** I think we could perhaps adjourn. J.R. Cox, do you have anything to present?

**COX:** No, I can wait. My report can wait.

**PITTS:** In consideration of the next meeting will delay the report of the Central Inspection until the next meeting. Is that Ok? Is there any other business to come before the Board?

**FOSTER:** I believe what, that the bylaws are being worked on and so forth? Is that still in the mill?

**PITTS:** I would have to defer that for law and Sharon is not here.

**SIMMERING:** I am not sure, but I do believe Sharon is still doing that. She said she would let us know and we could get it on the Agenda when it is ready.

**PITTS:** Any other business to come before the Board?

**MEETING ADJOURNED 2:00 P.M.**